

**UNPUBLISHED**

**UNITED STATES COURT OF APPEALS**

**FOR THE FOURTH CIRCUIT**

ANDREE L. SMITH,

Petitioner-Appellant.

v.

No. 99-6240

CLERK'S OFFICE, United States

Courthouse,

Respondent-Appellee.

Appeal from the United States District Court  
for the District of Maryland, at Baltimore.

Andre M. Davis, District Judge.

(CA-98-4227-AMD)

Submitted: June 15, 1999

Decided: September 24, 1999

Before WIDENER, NIEMEYER, and TRAXLER, Circuit Judges.

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Affirmed in part and vacated in part by unpublished per curiam opinion.

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**COUNSEL**

Andree L. Smith, Appellant Pro Se.

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Unpublished opinions are not binding precedent in this circuit. See  
Local Rule 36(c).

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## OPINION

### PER CURIAM:

Andree L. Smith is serving a sentence in Maryland state prison, having been paroled from a concurrent federal sentence. He filed a motion for appointment of counsel in the district court, seeking a federal public defender to represent him so that he could file challenges to his federal conviction and to the state's computation of his state sentence. The district court construed the motion for counsel as a petition for habeas corpus, 28 U.S.C.A. § 2254 (West 1994 & Supp. 1999), and a motion challenging his federal conviction, 28 U.S.C.A. § 2255 (West Supp. 1999). The court dismissed the § 2254 petition without prejudice because it was not submitted in proper form and the § 2255 motion as time-barred.

On appeal, Smith complains that he filed only a motion for appointment of counsel and not a § 2254 petition or a § 2255 motion. We agree that the district court was premature in extrapolating the substantive claims from Smith's motion for appointment of counsel. Therefore, we grant a certificate of appealability. We affirm the district court's denial of Smith's motion for appointment of counsel, see 28 U.S.C.A. § 1915(e)(1) (West Supp. 1999), as the court did not abuse its discretion in refusing to appoint counsel. Whisenant v. Yuam, 739 F.2d 160, 163 (4th Cir. 1984). We vacate those portions of the district court's order construing Smith's motion for counsel as motions under § 2254 and § 2255. We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and oral argument would not aid the decisional process.

AFFIRMED IN PART, VACATED IN PART